

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

PERCY LAVAE BACON,

Plaintiff,

vs.

DAVID ROGER, *et al.*,

Defendants.

Case No. 2:11-cv-00900-KJD-GWF

**ORDER**

This matter is before the Court on Plaintiff Percy Lavae Bacon's Motion to Serve (#21), filed July 7, 2011.<sup>1</sup>

Federal Rule of Civil Procedure 4(c)(3) provides that "[a]t the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court." A court must do so if the plaintiff is proceeding *in form pauperis* under 28 U.S.C. § 1915 or as a seaman pursuant to 28 U.S.C. § 1916. Here, Plaintiff is not proceeding *in forma pauperis* nor is he a seaman. Thus, it is within the Court's discretion whether to order service by a United States marshal. *See Washington v. Scharzenegger*, 2009 WL 4839944 (C.D. Cal.) ("As evidenced by the word "may" in Rule 4(c)(3), the Federal Rules of Civil Procedure give the Court discretion to appoint the marshal for service.").

The Advisory Committee Notes provide guidance on situations where a court should exercise its discretion in the plaintiff's favor. For example, appointment is generally proper where a law enforcement presence appears to be necessary to keep the peace, or in actions brought by the

---

<sup>1</sup> Plaintiff's motion is actually titled "Pro Se Motion to be Allowed an Opportunity to Serve each of the Additional Defendants for their Individual Acts or Actions which Violated This Plaintiff's and others to Include, But not Limited to the Nevada State's Public Under the Status of the State Court Proceedings." For ease of reference, however, the Court will refer to it as a motion to serve.

1 United States. *See* Adv. Comm. Notes to 1993 Amendments. Some courts apply a  
2 “reasonableness” standard when determining whether to appoint a marshal. *See Ovalle v. Fresno*  
3 *Bee Newspapers*, 2009 WL 398094 (C.D. Cal.) (citing *Rose v. Abraham*, 2008 WL 3540542 (E.D.  
4 Cal.). Although mindful of Plaintiff’s incarceration and the difficulty that might impose on his  
5 ability to retain a process server, the Court declines to exercise its discretion to order service by the  
6 marshal at this time. Plaintiff has not identified which of the defendants have not been served and  
7 this is not an instance where law enforcement will be necessary to keep the peace. Accordingly,

8 **IT IS ORDERED** that Plaintiff Percy Lavae Bacon’s Motion to Serve (#21) is **denied**.

9 Dated this 22nd day of July, 2011.

10  
11   
12 **GEORGE FOLEY, JR.**  
13 **United States Magistrate Judge**  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28